

ESTTA Tracking number: **ESTTA552276**Filing date: **08/05/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	FESTIVAL HOLDINGS, LLC		
Entity	Limited Liability Company	Citizenship	Virginia
Address	25 East 21st Street, 10th Fl. New York, NY 10010 UNITED STATES		

Attorney information	Amy G. Marino Williams Mullen, c/o IP Docketing 222 Central Park Avenue, Suite 1700 Virginia Beach, VA 23462-3035 UNITED STATES ip@williamsmullen.com Phone:757.499.8800
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Registration Subject to Cancellation

Registration No	3947654	Registration date	04/19/2011
Registrant	Davis, John 307 Harvest Garden Boerne, TX 78006 UNITED STATES		

Goods/Services Subject to CancellationClass 018. First Use: 2010/08/01 First Use In Commerce: 2010/08/01
All goods and services in the class are cancelled, namely: Pouches of textile**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2713386	Application Date	07/16/2002
Registration Date	05/06/2003	Foreign Priority Date	NONE
Word Mark	BONNAROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2002/06/07 First Use In Commerce: 2002/06/07 clothing, namely, caps, hats, t-shirts, tank tops, sweat shirts, sandals and flip-		

	flops		
U.S. Registration No.	2695269	Application Date	03/11/2002
Registration Date	03/11/2003	Foreign Priority Date	NONE
Word Mark	BONNAROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2002/03/15 First Use In Commerce: 2002/03/23 concert booking; entertainment services, namely, live music concerts; conducting entertainment exhibitions in the nature of live music festivals		
U.S. Registration No.	2749870	Application Date	07/16/2002
Registration Date	08/12/2003	Foreign Priority Date	NONE
Word Mark	BONNAROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2002/06/20 First Use In Commerce: 2002/06/20 musical sound recordings and musical video recordings		
U.S. Application No.	85801581	Application Date	12/13/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BONNAROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: Backpacks; tote bags; purses; handbags; wallets; duffel bags; gym bags; hiking bags; carry-on bags; athletic bags; all-purpose carrying bags; beach bags; book bags; overnight bags; souvenir bags; toiletry bags sold empty; travel bags; waist bags; clutches; fanny packs; shoulder bags; rucksacks		
U.S. Application No.	85802647	Application Date	12/14/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BONNAROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2002/06/20 First Use In Commerce: 2002/06/20 Online retail store services featuring music festival souvenirs, audio and video recordings featuring music, clothing, jewelry, apparel, clothing and home decor		

	accessories, posters, art, home furnishings, gifts, food and beverages, wristbands, sarongs, and aluminum water bottles sold empty; retail store services featuring music festival souvenirs, audio and video recordings featuring music, clothing, jewelry, apparel, clothing and home decor accessories, posters, art, home furnishings, gifts, food and beverages, wristbands, sarongs, and aluminum water bottles sold empty; issuing gift certificates which may then be redeemed for goods or services
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U.S. Application No.	85802702	Application Date	12/14/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BONNAROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2002/03/15 First Use In Commerce: 2002/03/15 Recreational resort facility services, namely, providing lodging, camp ground facilities, and food and beverages; making reservations and bookings for others for accommodations and meals at festivals; resort lodging services; restaurant, bar and cocktail lounge services		

U.S. Application No.	85802710	Application Date	12/14/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BONNAROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 045. First use: First Use: 2002/03/15 First Use In Commerce: 2002/03/15 Online social networking services; providing information concerning charitable causes and humanitarian efforts in the field of social justice and social justice as it relates to healthy lifestyles, education, and environmental protection		

U.S. Application No.	85801620	Application Date	12/13/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BONNAROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2002/06/20 First Use In Commerce: 2002/06/20 Computer software and downloadable mobile software applications for on-line music festival and entertainment and cultural event registration, management, navigation, and scheduling, for enabling social networking, for accessing video-on-demand, for streaming music, for accessing Internet radio, for enabling music and video broadcasting services, for accessing concert and music information and line-up, for calendaring of music concerts and special events, and for obtaining ticketing, performing payment and leaving feedback for music and entertainment festivals; downloadable images for use as computer screensavers; decorative magnets; Protective covers and cases for cell phones,		

	laptops and portable media players; pre-recorded CDs, video tapes, and DVDs featuring arts, theatre, entertainment in the nature of music festivals, musical performances, concerts, films, and other events, namely, entertainment and cultural events
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U.S. Application No.	85801625	Application Date	12/13/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BONNAROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2002/06/07 First Use In Commerce: 2002/06/07 Posters, stickers, artwork made of paper, paper goods, namely, note paper, note cards, post cards, and greeting cards; calendars; books in the field of arts, theatre, entertainment in the field of music festivals, music performances, film festivals, concerts, and other events, namely, entertainment and cultural events		

U.S. Application No.	85802695	Application Date	12/14/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BONNAROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 2002/06/20 First Use In Commerce: 2002/06/20 Video-on-demand transmission services featuring videos and music performances; provision of streaming music services via a global computer network and the Internet; Internet radio, music and video broadcasting services		

U.S. Application No.	85802696	Application Date	12/14/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BONNAROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2002/03/15 First Use In Commerce: 2002/03/15 Music and entertainment information via online electronic communications network; Ticket reservations and arranging for ticket reservations for shows, concerts, entertainment, festivals and other entertainment and cultural events; Educational services, namely, instruction, workshops, seminars, classes, and conferences in the field of arts, theatre, music, dance, gardening and environmental sustainability; Entertainment services, namely, motion picture theatre services featuring operation of movie theatres and conducting entertainment exhibitions in the nature of motion pictures displays, movie theatre, cinema theatre, theatre productions, comedy shows, and seminars with interactive commentaries in the field of arts, theatre, music, dance, gardening and environmental sustainability; Providing a website featuring non-downloadable audio-visual content in the nature of films, movies, video		

	recordings featuring festivals, music, and music performances; Providing online newsletters in the fields of arts, theatre, entertainment, concerts, festivals, and other entertainment and cultural events via e-mail; online journals, namely, blogs featuring arts, theatre, entertainment, concerts, festivals, and other entertainment and cultural events
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U.S. Application No.	85803597	Application Date	12/14/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CENTEROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2003/06/00 First Use In Commerce: 2003/06/00 Entertainment services, namely, live music concerts; entertainment services, namely, conducting entertainment exhibitions in the nature of motion pictures displays, movie theatre, cinema theatre, theatre productions, comedy shows, and seminars with interactive commentaries in the field of arts, theatre, music, dance, gardening and environmental sustainability		

U.S. Application No.	85812871	Application Date	12/31/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CENTEROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2003/06/00 First Use In Commerce: 2003/06/00 Mobile retail vendor services featuring souvenirs, music, clothing, jewelry, apparel, clothing and home décor accessories, posters, art, crafts, general consumer merchandise, home furnishings, gifts, food and beverages, wristbands, sarongs, and aluminum water bottles sold empty		

U.S. Application No.	85803595	Application Date	12/14/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CENTEROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2003/06/00 First Use In Commerce: 2003/06/00 Serving food and drinks; restaurant, bar and lounge services; providing of food and drink via a mobile truck; mobile food vendor services; café services		

U.S. Application No.	85746109	Application Date	10/04/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	KREWE OF ROO		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 038. First use: Providing on-line electronic bulletin boards for transmission of messages among computer users concerning entertainment related to news updates and press releases, artist tour dates, music reviews, ticketing information, on-line contests and music recordings</p> <p>Class 041. First use: Fan club services; providing information on-line in the field of entertainment, namely, information about entertainment news updates and press releases, entertainment artist tour dates, music reviews, entertainment event ticketing information, on-line contests for entertainment purposes and music recordings</p>

U.S. Registration No.	4375890	Application Date	12/14/2012
Registration Date	07/30/2013	Foreign Priority Date	NONE
Word Mark	PLANET ROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 041. First use: First Use: 2004/06/00 First Use In Commerce: 2004/06/00</p> <p>Entertainment services, namely, live music concerts; conducting entertainment exhibitions in the nature of motion picture displays, theatre, comedy shows, Yoga instruction, dance instruction; educational services, namely, providing exhibitions, seminars, lectures, workshops, and interactive commentaries in the fields of the art, music, theater, dance, healthy lifestyles, education, environmental protection, social justice, gardening, and instrument building</p>		

U.S. Application No.	85803602	Application Date	12/14/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PLANET ROO		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 045. First use: First Use: 2004/06/00 First Use In Commerce: 2004/06/00</p> <p>Providing information concerning charitable causes and humanitarian efforts in the field of healthy lifestyles, education, environmental protection, and social justice</p>		

Attachments	Festival Holdings - Petition to Cancel w Exhibit A.pdf(79457 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Amy G. Marino/
Name	Amy G. Marino
Date	08/05/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FESTIVAL HOLDINGS, LLC,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. _____
)	
JOHN DAVIS,)	
)	
Registrant.)	
_____)	
)	
Mark: BINOROO)	
Registration No: 3,947,654;)	
Class: 18)	

PETITION TO CANCEL

Festival Holdings, LLC (“Festival Holdings” or “Petitioner”), a Virginia limited liability company, located and doing business at 25 East 21st Street, 10th Fl., New York, New York, 10010 believes it is damaged and will continue to be damaged by the mark BINOROO, shown in Registration No. 3,947,654 (the “Registration”) owned by and registered to John Davis (“Davis” or “Registrant”), an individual located and doing business at: 307 Harvest Garden, Boerne, Texas, and hereby petitions to cancel the same upon the following grounds, pursuant to 15 U.S.C. §§ 1052(d), 1064.

LIKELIHOOD OF CONFUSION

1. Davis filed application serial no. 85/110,791 on August, 18, 2010, and obtained Registration No. 3,947,654 on April 19, 2011, on the Principal Register for the mark BINOROO

(the “BINOROO Mark”) for use in connection with “Pouches of textile” in International Class 18.

2. Prior to the filing of the application for the BINOROO Mark and prior to any date of first use upon which Davis can rely, and since at least as early as 2002, Festival Holdings adopted and began using the mark “BONNAROO” (the “BONNAROO Mark”) in connection with various goods and services, including clothing and accessories in International Class 25, entertainment services in International Class 41, and recordings in International Class 9, along with various goods and services in International Classes, 09, 16, 18, 35, 38, 43 and 45 (collectively, the “BONNAROO Goods and Services”).

3. Festival Holdings is the owner of extensive common law rights to the BONNAROO name and the BONNAROO Mark by virtue of its continuous and exclusive use of the BONNAROO Goods and Services in commerce since as early as 2002.

4. Festival Holdings also owns all right, title and interest in and to Registration No. 2713386 in connection with “clothing, namely, caps, hats, t-shirts, tank tops, sweat shirts, sandals and flip-flops” in International Class 25, Reg. No. 2695269 in connection with “concert booking; entertainment services, namely, live music concerts; conducting entertainment exhibitions in the nature of live music festivals” and Reg. No. 2749870 in connection with “musical sound recordings and musical video recordings, for the BONNAROO Mark (collectively, the “BONNAROO Registrations”). An electronic printout of information from the electronic database records of the USPTO showing the current status and title of the above Registrations is attached hereto as Exhibit A.

5. The BONNAROO Registrations have become incontestable under 15 U.S.C. § 1065.

6. Festival Holdings also owns all right, title and interest in and to applications for the BONNAROO Mark, Serial Nos. 85/801,581, 85/802,647, 85/802,702, 85/802,710, 85/801,620, 85/801,625, 85/802,695, and 85/802,696, in connection with various goods and services in International Classes, 38, 41, 16, 09, 45, 43, 35, and 18 respectively.

7. Festival Holdings has also developed and used a “family” of marks containing the suffix “ROO,” including BONNAROO, KREWE OF ROO, CENTEROO, and PLANET ROO, in connection with the BONNAROO Goods and Services.

8. Festival Holdings filed Application Serial No. 85/802,696, in connection with goods in International Class 18, some of which are in actual use, as a natural expansion of the BONNAROO Mark and family of “-ROO” marks in connection with various goods and services.

9. Davis’ date of filing of the BINOROO Mark is subsequent to Festival Holdings’ filing date and issuance date of Registration Nos. 2,713,386, 2,695,269, and 2,749,870. Davis’ alleged date of first use for the BINOROO Mark is subsequent to Festival Holdings’ date of first use for Registration Nos. 2,713,386, 2,695,269, and 2,749,870, subsequent to Festival Holdings’ date of first use for goods and services under serial nos. 85/801,581, 85/802,647, 85/802,702, 85/802,710, 85/801,620, 85/801,625, 85/802,695, and date of first use for some goods under serial no. 85/802,696, and subsequent to Festival Holdings’ date of first use for the marks CENTEROO, KREWE OF ROO, and PLANET ROO.

8. Festival Holdings has invested great time, effort, and resources in the development of its BONNAROO Mark and family of “-ROO” marks, and Festival Holdings has developed valuable goodwill in the BONNAROO Mark and family of “-ROO” marks. Festival Holdings’ unique BONNAROO Goods and Services have become widely recognized as emanating from Festival Holdings and as maintaining only the highest quality standards.

9. Festival Holdings has enjoyed substantial sales of the BONNAROO Goods and Services under the BONNAROO Mark and family of “-ROO” marks in the United States.

10. Festival Holdings has expended substantial sums on advertising, marketing, and promoting its goods and services provided under the BONNAROO Mark. The BONNAROO Mark has been used in national publications, print advertisements, television, on the Internet, and in numerous signs, banners, and promotional materials at events serviced by Festival Holdings.

11. By virtue of the extensive advertising, marketing, promotion and sales of the BONNAROO Goods and Services under the BONNAROO Mark, and the high quality and standards of those goods and services, the BONNAROO Mark has come to represent valuable goodwill associated with Festival Holdings, and Festival Holdings has gained a most valuable reputation for its BONNAROO Mark.

13. The Davis Mark is nearly identical to and confusingly similar to the BONNAROO Mark.

14. The goods and services listed under the BINOROO Mark are substantially similar and related to the BONNAROO Goods and Services, and the goods in International Class 18 are nearly identical to the BONNAROO goods in International Class 18. Davis is offering pouches of textile that are identical, substantially similar or related to the hiking bags, carrying bags, and other pouches of Festival Holdings.

15. Davis is likely to advertise in some of the same media and use advertisements that are substantially similar to those of Festival Holdings.

16. Davis is likely to use the BINOROO Mark in connection with its goods and services in a manner that is likely to be confused with Festival Holdings’ use of the BONNAROO Mark.

17. Festival Holdings has not consented to any of Davis' use of the BINOROO Mark.

18. Davis' use and application for the BINOROO Mark has been with constructive and actual notice of Festival Holdings' prior use of and application for the BONNAROO Mark in connection with the BONNAROO Goods and Services.

19. The BINOROO Mark is confusingly similar to the BONNAROO Mark, and use of the BINOROO Mark by Davis on the goods specified in its registration is likely to cause confusion, mistake, or deception that Davis' services are endorsed, sponsored, or approved by Festival Holdings within the meaning of section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

20. If Davis is permitted to continue use and registration of the BINOROO Mark for the goods specified in its registration, Festival Holdings will be damaged by reason of the confusion and similarity between the BINOROO Mark and the BONNAROO Mark.

21. Davis' continued use and registration of the BINOROO Mark will impair, diminish and dilute Festival Holdings' goodwill and rights in its BONNAROO Mark, causing Festival Holdings irreparable injury.

22. Any defect, objection, or fault found with Davis' goods and services marketed under the BINOROO Mark will necessarily reflect upon and injure the reputation which Festival Holdings has established for the BONNAROO Goods and Services marketed under the BONNAROO Mark.

PRAYER FOR RELIEF

WHEREFORE, Festival Holdings prays that:

This Petition for Cancellation be granted, that judgment be entered against Registrant, and that United States Trademark Registration No. 3,947,654 be cancelled.

Festival Holdings hereby gives notice under Rule 2.122(d) of the Rules of Practice that after hearing and in any appeal on this cancellation proceeding, it will rely on its registrations which are annexed as Exhibit A to this Petition to Cancel as evidence in support of this Petition to Cancel.

August 5, 2013

Respectfully Submitted,

_____/Amy G. Marino/_____
Amy G. Marino
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222 Central Park Avenue
Suite 1700
Virginia Beach, VA 23462
Telephone: (757) 499-8800
Facsimile: (757) 473-0395

*Attorneys for Petitioner Festival Holdings,
LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this fifth day of August, 2013, the foregoing PETITION TO CANCEL was delivered by certified mail, return receipt requested, to the following:

John Davis
307 HARVEST GDN
BOERNE, TEXAS 78006-1716
UNITED STATES

Registrant

/Amy G. Marino/

Amy G. Marino
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Virginia Beach, VA 23462
Telephone: (757) 499-8800
Facsimile: (757) 473-0395

*Attorneys for Petitioner Festival Holdings
LLC*

#23039682v1

FESTIVAL HOLDINGS, LLC,
Petitioner,
v.
JOHN DAVIS,
Registrant.

Mark: BINOROO
Registration No: 3,947,654;
Class: 18

EXHIBIT A

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,713,386

Registered May 6, 2003

**TRADEMARK
PRINCIPAL REGISTER**

BONNAROO

FESTIVAL HOLDINGS, L.L.C. (VIRGINIA LTD
LIAB CO)
1128 DUBLIN STREET - 200
NEW ORLEANS, LA 70118

FIRST USE 6-7-2002; IN COMMERCE 6-7-2002.

SER. NO. 76-431,085, FILED 7-16-2002.

FOR: CLOTHING, NAMELY, CAPS, HATS, T-
SHIRTS, TANK TOPS, SWEAT SHIRTS, SANDALS
AND FLIP-FLOPS, IN CLASS 25 (U.S. CLS. 22 AND
39).

ALICE SUE CARRUTHERS, EXAMINING ATTOR-
NEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

Reg. No. 2,695,269

United States Patent and Trademark Office

Registered Mar. 11, 2003

**SERVICE MARK
PRINCIPAL REGISTER**

BONNAROO

FESTIVAL HOLDINGS, L.L.C. (VIRGINIA LIMITED LIABILITY COMPANY)
1128 DUBLIN STREET - 200
NEW ORLEANS, LA 70118

FIRST USE 3-15-2002; IN COMMERCE 3-23-2002.

FOR: CONCERT BOOKING; ENTERTAINMENT SERVICES, NAMELY, LIVE MUSIC CONCERTS; CONDUCTING ENTERTAINMENT EXHIBITIONS IN THE NATURE OF LIVE MUSIC FESTIVALS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

SER. NO. 76-380,796, FILED 3-11-2002.

TRACY WHITAKER-BOWN, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,749,870

United States Patent and Trademark Office

Registered Aug. 12, 2003

**TRADEMARK
PRINCIPAL REGISTER**

BONNAROO

FESTIVAL HOLDINGS, L.L.C. (VIRGINIA LIMITED LIABILITY COMPANY)
1128 DUBLIN STREET - 200
NEW ORLEANS, LA 70118

FIRST USE 6-20-2002; IN COMMERCE 6-20-2002.

SER. NO. 76-431,087, FILED 7-16-2002.

FOR: MUSICAL SOUND RECORDINGS AND
MUSICAL VIDEO RECORDINGS, IN CLASS 9 (U.S.
CLS. 21, 23, 26, 36 AND 38).

TRACY WHITAKER-BOWN, EXAMINING ATTORNEY